REMARKS/ARGUMENTS

Claims 1-30 are pending in the application. Although the Office Action Summary states that claims 1-29 are rejected, claims 24 and 25 have not been rejected by the examiner in the body of the office action. Claim 2 is canceled. Claims 1, 3, 7, 8, 14-16, 18, 27 and 30 have been amended. New claims 31 and 32 have been added. Upon entry of this amendment, claims 1, and 3-32 will be pending in this application.

Claim objections

Claim 30, objected to by the examiner as being in improper form, has been amended to properly depend from independent claims 1 or 29. Consideration of amended claim 30 on its merits is respectfully requested.

Information Disclosure Statement

Applicants note the examiner's objection that the information disclosure statement does not include a concise statement of the relevance of the non-English language references listed therein, and acknowledges that the information referred to therein has not been considered in the examination of the application.

Claim Rejections - 35 USC §112

The examiner has objected to claims 7, 8, 15 and 16 as being indefinite due to use of the terms "about" and to claim 4 as being indefinite due to use of the term "essentially".

Applicants submit that these terms do not make the claims indefinite. The term "about" and "essentially" are commonly used in claims of issued patents covering inventions of this nature. The proper test for definiteness is whether one skilled in the art would understand what is claimed, in light of the specification. *See* MPEP §2173.05(b). Indeed, the MPEP clearly states that terms such as "about", "essentially", "similar, "substantially", etc. are acceptable in claims. *Id.* A person skilled in the art would have no difficulty in understanding the scope of a claim containing such words and therefore these terms have been retained in the claims.

The examiner has further objected that claims 7, 8, 15 and 16 are indefinite as it is not clear on what basis the ratios in the claims are formed. Applicants have amended these

claims to specify that the ratios are "by weight." Support for this amendment can be found in the specification on page 10, lines 11 to 14.

The examiner has stated that claim 18 is indefinite in scope. The claim has been amended to remove the phrases "warm water" and "hot water" and replace them with the temperature ranges "40 to 50° C" and ">50° C" respectively. Support for this amendment can be found in the specification on page 9, line 5.

Claim 18 has been further amended to label the steps (a) to (e).

The examiner has objected that the phrase "as herein defined" renders claim 27 as indefinite in scope. Claim 27 has been amended to remove this phrase.

The examiner has failed to give the reasons for the rejection of claims 14, 17, 20, 21 and 23 as indefinite under 35 USC §112. In light of this omission and the amendment of independent claims 14 and 18 upon which these claims are dependent, applicants submit that these claims are free of the rejection.

Claim Rejections - 35 USC §102

Claims 1 to 6, 9 to 14 and 26 to 29 are rejected as being anticipated by Klose *et al* (PCT/US95/13242) (hereinafter "Klose").

Klose teaches the production of a ready-to-freeze alcoholic beverage comprising an alcohol, a flavouring, water, sugar, and a stabilizer blend of locust bean gum, guar gum and optionally pectin.

However, as stated on page 5, lines 24 to 28 of Klose, the "ready-to-freeze" alcoholic beverage forms a slushy, fine crystalline structure at freezer temperatures. On page 10, lines 4 to 11 of Klose, the meaning of the term "slushy frozen cocktail product" is defined to be a product with the consistency of a partly melted, semi-frozen soft ice, which is neither freely pourable nor hard like an ice-cube.

The present invention relates to a freezable alcoholic beverage comprising alcohol, a mixer (such as water) and a stabilizer. Because the beverage is able to be frozen onto a stick (see page 4, line 26 to 27), the consistency of the frozen beverage of the present invention is different, in particular it is rigid rather than the "slushy" consistency of the beverage described in Klose. The product described in Klose would be unable to be formed onto a stick as it is not

in a rigid form. Claim 1 has been amended to point out that the beverage is in rigid form. Basis for this amendment can be found in the specification on page 4, line 26 to 27, where it is stated that the product may be in the form of an ice-stick.

Claim 14 has been amended to include the step of freezing the alcohol-water and stabilizer solution into a rigid form having a crystalline structure, which is not taught by Klose for the reasons stated above.

For the reasons state above, applicants consider that amended Claim 1, as well as claims 2-6 and 9 dependent thereon, and amended claim 14, and claims 26-29 dependent thereon, avoid the rejection over Klose.

Claims 1 to 6, 9 to 14 and 26 to 27 are rejected as being anticipated by Oshimura *et al* (JP 4-258273) (hereinafter "Oshimura").

Oshimura teaches the use of a gelling agent to form a "sherbet-form" frozen liquor. As stated above, the present invention relates to a freezable alcoholic beverage that is rigid when frozen. This requires the freezable alcoholic beverage to be crystalline (see page 1, lines 17-20). A gel, as taught by Oshimura, would not fulfil this requirement. In addition, the examiner's quotation of the passage in Oshimura at page 5, first paragraph, fails to include the last sentence: "As a result, the structure has to be smashed before drinking, producing a poor quality taste." In other words, Oshimura teaches that a rigid structure is undesirable because it has to be smashed before drinking. Therefore, Oshimura teaches away from a beverage with a rigid form according to the present invention . As stated above, Claims 1 and 14 have been amended to specify that the frozen beverage has a rigid form with a crystalline structure. Since Oshimura does not anticipate this structure, applicants submit that amended claim 1, and claims 1-6 and 9-13 dependent thereon, and amended claim 14, and claims 26-29 dependent thereon, avoid the rejection over Oshimura.

Claim Rejections - 35 USC §103

The examiner has stated that Claims 7, 8, 15, 16 and 18 to 23 are rejected as being obvious over Oshimura or Klose.

The examiner contends that it is well-known amongst persons skilled in the beverage art to modify ingredients in order to produce products varying in taste, texture and

flavour. Nonetheless, as discussed above, neither Klose nor Oshimura teaches or suggests a frozen alcoholic beverage having a rigid form with a crystalline structure. It would therefore not be obvious to a person skilled in the art how to modify the recipes of Oshimura and Klose to produce a frozen alcoholic beverage in rigid form because neither reference, alone or in combination, teaches or suggests such a product (and in the case of Oshimura, actually teaches that such a product is undesirable).

As the examiner states, neither Oshimura nor Klose disclose the claimed ratio of ingredients. One skilled in the art is aware that changing the amount of one component of the beverage or substituting one ingredient for another may cause an undesirable change in the characteristics of the product which would require the amounts of all of the other ingredients to be carefully balanced in order to arrive at a suitable product. These problems are exacerbated upon freezing the beverage to a solid form. Since a rigid frozen product is not even contemplated by Oshimura or Klose, the ratios of ingredients required to achieve the results of the present invention are neither anticipated nor obvious from the prior art.

In particular, the present invention overcomes problems arising from the presence of water and ethanol in a rigid frozen alcoholic beverage product. Because water expands when it freezes, any cell based ingredients used in the product can change irreversibly upon freezing, which affects characteristics of the product, such as mouth feel, etc. Ethanol will result in the freezing point of the mixture being lowered, and certain concentrations of ethanol in the product result in the product not freezing to form a rigid, crystalline material. Applicants have discovered that the specific ratios of the claims achieve the unexpected result of an acceptable rigid form freezable alcoholic beverage not anticipated or suggested by the prior art.

CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 303-571-4000.

Respectfully submitted,

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